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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,135	05/31/2001	Brandon James Yoe	50623.00168	1923
7590 03/11/2004				
CAMERON KERRIGAN SQUIRE,SANDERS & DEMPSEY L.L.P ONE MARITIME PLAZA, SUITE 300 SAN FRANCISCO,, CA 94111-3492		EXAMINER NGUYEN, CAMTU TRAN		
		ART UNIT	PAPER NUMBER	
		3743		

DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/872,135

Applicant(s)

YOE ET AL.

Examiner

Camtu T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-7, 10-32, 37-39, 41-44 and 46-85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 10-32, 37-39, 41-44 and 46-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date December 17, 2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to RCE Amendment*

This Office Action is in response to applicant's amendment filed on December 15, 2003. Claims 4, 8, 9, 33-36, 40, and 45 are cancelled. Claims 73-85 are newly added claims. Claims 1-3, 5-7, 10-32, 37-39, 41-44, 46-85 are pending. Applicant's comments pertaining to the Crocker et al and to the Turnlund et al references are acknowledged. The claims, as amended, have been carefully considered and are rejected below in view of the newly discovered reference to Fischell et al of U.S. Patent No. 5,840,009.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-7, 10-29, 31, 32, 37-39, 41-44, 46-85 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischell et al (U.S. Patent No. 5,840,009). Fischell et al illustrates in Figure 1 a side view of a cylindrical stent (1) having a radial dimension R, circumferential rings (3), and longitudinals (5). The dashed line (4) indicates the radiation field intensity along the surrounding cylinder from  $x=-L/2$  to  $x=+L/2$  and also along the surrounding cylindrical surface that extends beyond the ends of the stent (1). Fishell et al also teach in the graph of Figure 1 that as one moves towards the ends of the stent, the radiation field falls to a negligibly small at  $x=-A$

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and  $x=+A$ . Fischell et al further teach that Gamma, or gamma plus beta particles emitting isotopes can also be used with the stent and that the stent can be made radioactive by ion implantation. Furthermore, Fischell et al discloses that it may be advantageous to place an anti-thrombogenic coating on the surface of the stent either before or after the radioisotope has been ion implanted into the stent and still further, Fischell et al discloses that the radioisotope could be electrolytically plated onto the stent instead of using ion implantation (column 1 lines 54-67, column 2 lines 1-13 and 59-67, column 3 lines 1-10).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al (U.S. Patent No. 5,840,009) and further in view of Turnlund et al (Patent Application Publication No. US2001/0001806 A1). Fischell et al illustrates in Figure 1 a side view of a cylindrical stent (1) for delivering therapeutic radiation to a vessel comprising element set forth in these claims but does not teach the dose of the radioactivity comprises up to 60 Gray. Turnlund et al teaches in paragraph [0043] a dose of radiation of between 1 Gy and about 50 Gy. Therefore it would have been obvious to one skilled in the art to use the Fischell et al's stent having an amount radiation dose of radiation as suggested by Turnlund et al as such has been shown to induce

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thrombus formation along the interior surface, which is the initial step towards endothelization of the lumen interior surface, proliferative cellular healing can commence.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 703-305-0537. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Camtu Nguyen  
March 9, 2004

  
Henry A. Bennett  
Supervisory Patent Examiner  
Group 3700